

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2212

Introduced by Assembly Member Fuentes

February 18, 2010

An act to add Section 709 to the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, as amended, Fuentes. Minors: mental competency.

Existing statutory law, in counties that agree to be subject to these provisions pursuant to a resolution adopted by the board of supervisors, provides that when it appears to the court, or upon request of the prosecutor or counsel, that a minor who is alleged to come within the jurisdiction of the juvenile court as a person who is or may be found to be a ward of the juvenile court may have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation by a licensed mental health professional.

Existing court rules provide that if the court finds that there is reason to doubt that a child who is the subject of a petition to declare the child a ward of the juvenile court is capable of understanding the proceedings or of cooperating with the child's attorney, the court is required to stay the proceedings and conduct a hearing regarding the child's competence. If the court believes that a child who comes within that description is mentally disabled or may be mentally ill, the court may stay the

proceedings and order that the child be taken to a facility for an evaluation, as specified.

This bill would provide, with respect to a minor who is alleged to come within the jurisdiction of the juvenile court as a person who is or may be found to be a ward of the juvenile court, that if, during the pendency of any action, a doubt ~~is expressed~~ *arises in the mind of the presiding officer* that the minor who is the subject of the action has sufficient present ability to ~~consult~~ *cooperate* with his or her attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him or her, the court shall declare a doubt as to the minor's competency and suspend the proceedings. The bill would require, upon declaration of a doubt as to the minor's competency, the court to order that the question of the minor's competence be determined in a hearing, as specified. The bill would require the court to appoint an expert in the field of juvenile adjudicative competency, as specified, to evaluate whether the minor suffers from a mental disorder, developmental disability, or developmental immaturity and, if so, whether the condition impairs the minor's competency. The bill would require the Judicial Council to develop and adopt rules to implement these requirements. The bill would require that, if the minor is found to be incompetent by a preponderance of the evidence, all proceedings remain suspended to determine whether there is a substantial probability that the minor will attain that capacity in the foreseeable future or the court no longer retains jurisdiction. The period of time during which these proceedings would be suspended would not exceed 6 months.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 709 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 709. (a) If, during the pendency of any action, a doubt ~~is~~
- 4 ~~expressed~~ *arises in the mind of the presiding officer* that the minor
- 5 who is the subject of that action has sufficient present ability to
- 6 ~~consult~~ *cooperate* with his or her lawyer with a reasonable degree
- 7 of rational understanding, and a rational as well as factual
- 8 understanding of the proceedings against him or her, the court

1 shall declare a doubt as to the minor's competency and shall
2 suspend the proceedings.

3 (b) Upon declaration of a doubt as to the minor's competency,
4 the court shall order that the question of the minor's competence
5 is to be determined in a hearing. The court shall appoint an expert
6 in the field of juvenile adjudicative competency to evaluate whether
7 the minor suffers from a mental disorder, developmental disability,
8 or developmental immaturity, and, if so, whether the condition or
9 conditions impair the minor's competency. The expert shall have
10 expertise in child and adolescent development and training in the
11 forensic evaluation of juveniles, and shall be familiar with
12 competency standards and accepted criteria used in evaluating
13 competence. The Judicial Council shall develop and adopt rules
14 for the implementation of these requirements.

15 (c) If the minor is found to be incompetent by a preponderance
16 of the evidence, all proceedings shall remain suspended for a period
17 of time that is no longer than reasonably necessary to determine
18 whether there is a substantial probability that the minor will attain
19 that capacity in the foreseeable future, or the court no longer retains
20 jurisdiction. This period of time during which these proceedings
21 are suspended shall not exceed six months. During this time, the
22 following motions and hearings may be heard and ruled upon:

23 (1) A motion to dismiss.

24 (2) A motion by the defense regarding a change in the placement
25 of the minor.

26 (3) A detention hearing.

27 (4) A demurrer.

28 (d) If the minor is found to be competent, the court may proceed
29 commensurate with the court's jurisdiction.

30 (e) This section applies to a minor who is alleged to come within
31 the jurisdiction of the court pursuant to Section 601 or 602.